IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 33266 of 2007(I)

AGAINST THE ORDER IN EP.333/2007 & EA.1033/2007 of PRL.S.C.,THALASSERY
.....

PETITIONER:

B.R.PUSHAPLATHA,
D/O. LATE B.R.RAMAKRISHNAN
RESIDING AT PUSHPALAYAM,THUNOLI LINE,
NEAR PARAKANDY SCHOOL, KANNUR IIAMSOM,
CHALAD DESOM, KANNUR.670 001.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT:

B.R.SUBHALAKSHMI,
D/O. NARASIMHAM, SHAN QUARTERS,
BALAN KINAR, KATTAMPALLY,
P.O., CHIRAKKAL, KANNUR DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 33266 OF 2007

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Dated this the 13th day of November, 2007.

J U D G M E N T

This writ petition is filed for setting aside the order in E.P.333/07 and E.A.1033/07 dated 31.10.07 directing the delivery of the property with police and break opening the lock by effecting delivery on 13.11.07.

2. Heard the learned counsel for the writ petitioner. It is submitted that an appeal has been preferred against the preliminary decree before this Court and it is pending as RFA 28/05. No stay order is passed by this Court in the said first appeal. Thereafter, a final decree application has been filed and the Court has passed a final decree as early as on 10.4.07. No appeal is preferred against the final decree. So, as the matter stands, there is a conclusive final decree which has got all force of law. It is that final decree that is put into execution and as per the provisions of the CPC Order 21 Rule 22 notice of delivery need not be given for the reason that

the prayer for delivery is made within the period of two years. So taking into consideration all these facts the Court has ordered delivery of the property with police aid. One cannot find fault with such an order especially in the light of the fact that there is no stay in the appeal nor there is any appeal from the final decree. Therefore, the order does not suffer from any infirmity.

3. Needless to say that ultimately if the petitioner wins in the first appeal, consequential orders will follow or he can proceed under the relevant provisions of CPC to get back the property. If the writ petitioner has moved any copy application, the Court may consider the urgency and issue copy as expeditiously as possible.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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